

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rolando Vasquez	Team: Squad #8	CCRB Case #: 201607870	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 05/15/2016 12:47 AM	Location of Incident: § 87(2)(b)	Precinct: 09	18 Mo. SOL 11/15/2017	EO SOL 11/15/2017	
Date/Time CV Reported Tue, 09/13/2016 11:43 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 09/13/2016 11:43 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. LT James Lee	00000	930421	009 PCT
2. DT3 Andre Mazyck	04330	928731	010 DET
3. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Gaetano Calabro	02240	905419	009 PCT
2. POM Timothy Harrington	16253	944636	E S U
3. POM Derek Labua	14541	943456	E S U
4. POM Joseph Gavin	24210	922408	009 PCT
5. POF Zulema Porter	15797	929561	009 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT James Lee	Abuse: Outside § 87(2)(b) Lieutenant James Lee stopped § 87(2)(b)	§ 87(2)(b)
B.DT3 Andre Mazyck	Abuse: Inside § 87(2)(b) Detective Andre Mazyck threatened to arrest § 87(2)(b)	§ 87(2)(b)
C.DT3 Andre Mazyck	Abuse: Detective Andre Mazyck entered § 87(2)(b) 3rd Floor.	§ 87(2)(b)
D.LT James Lee	Abuse: Lieutenant James Lee entered § 87(2)(b) 3rd Floor.	§ 87(2)(b)
E.LT James Lee	Abuse: Lieutenant James Lee arrested § 87(2)(b)	§ 87(2)(b)
F.LT James Lee	Force: Inside § 87(2)(b) Lieutenant James Lee used physical force against § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
G. An officer	Force: Outside of § 87(2)(b) an officer used physical force against § 87(2)(b)	

### Case Summary

This complaint was filed by § 87(2)(b) on September 13, 2016 via the Agency's website.

On May 15, 2016, at approximately 12:47 a.m., § 87(2)(b) and § 87(2)(b) were attending a bachelorette party at an Airbnb rental apartment at § 87(2)(b) on the § 87(2)(b) floor in Manhattan. Lt. James Lee from the 9<sup>th</sup> Precinct and Det. Andre Mazyck, assigned to the 9<sup>th</sup> Precinct Detective Squad on the incident date, arrived at the location in response to a call about a burglary on the second floor of the building. § 87(2)(b) was stopped by Lt. Lee outside of the building (**Allegation A**). After speaking with the victim of the burglary, Lt. Lee and Det. Mazyck went to the third floor to canvass for witnesses. Det. Mazyck allegedly entered the third floor apartment (**Allegation B**). Det. Mazyck allegedly threatened to arrest § 87(2)(b) (**Allegation C**). Lt. Lee attempted to obtain information from § 87(2)(b). Lt. Lee entered the § 87(2)(b) floor apartment to remove § 87(2)(b) from the building (**Allegation D**). Lt. Lee arrested § 87(2)(b) (**Allegation E**). Lt. Lee allegedly pulled § 87(2)(b) out of the apartment and dragged her down the stairs (**Allegation F**). Outside of the building, an officer allegedly pushed § 87(2)(b) (**Allegation G**).

§ 87(2)(b)  
No other arrests or summonses were issued. There is no video footage that captures this incident. This case was submitted for review beyond the 90-day benchmark due to the need to interview multiple witnesses, many who lived out of state, and multiple officers who were on the scene. This incident was also reported to the CCRB four months after it occurred.

§ 87(2)(g)

### Mediation, Civil and Criminal Histories

- This complaint was unsuitable for mediation because § 87(2)(b) filed a notice of claim.
- The NYC Office of the Comptroller responded to a request noting that § 87(2)(b) filed a notice of claim regarding this incident. In her claim, § 87(2)(b) alleges excessive force resulting in personal injury (BR01).
- The NYC Office of the Comptroller responded to a request indicating that no notice of claim has been filed by § 87(2)(b) or § 87(2)(b) regarding this incident (BR02).
- § 87(2)(b)  
§ 87(2)(b)
- § 87(2)(b) and § 87(2)(b) do not have any criminal convictions in New York City (BR04).

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) and § 87(2)(b) (BR05).
- Lt. Lee has been a member of the service for 14 years and has two prior substantiated allegations. In case 200702497 the Board substantiated a property damage allegation, recommended charges, and the NYPD enforced no disciplinary action. In case

201300702, the Board substantiated a vehicle search, recommended a command discipline and the NYPD enforced no disciplinary action (BR06).

- Det. Mazyck has been a member of the service for fifteen years and this is the first complaint against him (BR07).

### **Potential Issues**

- § 87(2)(b) provided the contact information for three people who were witnesses to the above incident, § 87(2)(b) and § 87(2)(b). None of these witnesses responded to contact attempts. § 87(2)(b) also provided the undersigned with contact information for § 87(2)(b) another possible witness. The undersigned spoke with § 87(2)(b) across numerous contact attempts, she was not available to provide a statement during any of these calls, and she did not reach out to the undersigned as she had agreed to follow up. Consequently, statements were not obtained from these witnesses.

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

- § 87(2)(b) described the subject officer who allegedly pushed her on the sidewalk at the end of the incident as a uniformed male officer, about 6'0" tall, who might have been white or Hispanic, and was young, approximately 23-25 years old. She was unable to remember any other details about his appearance. § 87(2)(b) had not seen this officer before she got outside. PO Joseph Gavin and PO Gaetano Calabro were both § 87(2)(b) on the date of the incident and displayed greying hair when they appeared for their CCRB interviews. PO Timothy Harrington and PO Derek Labua are both white males and they were both § 87(2)(b) on the date of the incident. PO Harrington stands § 87(2)(b) and PO Labua stands § 87(2)(b) tall. PO Harrington and PO Labua were both interviewed regarding this incident. Both officers testified that they were dealing with women on the sidewalk outside of the building when they arrived on the scene. Both officers denied that they pushed anyone. A plainclothes anti-crime unit also responded to this incident but no other uniformed officers were identified who responded to the location. Because § 87(2)(b) was unable to remember a more detailed description of the officer, the description she did provide did not differentiate between any of the identified officers on the scene, and the interviewed officers denied having engaged in the alleged conduct or witnessing it occur, the investigation could not determine who the subject officer was. Therefore, Allegation H is pleaded against "an officer."
- § 87(2)(b) testified that Det. Mazyck asked her questions about what she was doing as she was trying to get back inside the building. Either Det. Mazyck or Lt. Lee, she did not remember which, did not let her go upstairs and instructed PO Calabro to remain with her downstairs. Det. Mazyck testified that he did not recall speaking with § 87(2)(b) outside of the building. Lt. Lee acknowledged engaging § 87(2)(b) outside of the building as part of his canvass for witnesses to the burglary. However, Lt. Lee denied instructing any officer to detain her any further. PO Calabro testified that he was instructed by Lt. Lee to not let § 87(2)(b) leave. Based on the corroborating testimony from PO Calabro that he was instructed to detain § 87(2)(b)

§ 87(2)(b) and that Lt. Lee was the supervisor on the scene, Allegation A is pleaded against Lt. Lee.

### **Allegations not pleaded**

- Abuse of Authority: A refusal to provide name and shield allegation is not pleaded against Det. Mazyck and Lt. Lee. The attendees of the bachelorette party who were interviewed provided consistent testimony that repeated requests were made to Lt. Lee and Det. Mazyck to show their IDs because they were apprehensive about whether the men were really police officers or if they might have been dancers. § 87(2)(b) testified that Lt. Lee showed her his badge but she wanted to see some form of ID that had his picture because she did not believe the badge was real. Only § 87(2)(b) provided testimony in which she explicitly asked Lt. Lee for his name and he provided it to her. Lt. Lee and Det. Mazyck both testified that they identified themselves verbally as police officers to the women at the party. Based on the absence of a specific allegation that the officers refused to provide their name and shield numbers and evidence that this information was provided to them and it was disbelieved by the attendees of the party, no refusal allegation is pleaded against Lt. Lee or Det. Mazyck.

### **Allegation A – Abuse of Authority: Outside § 87(2)(b) Lieutenant James Lee stopped § 87(2)(b)**

The following background information regarding this incident is undisputed. A bachelorette party in honor of § 87(2)(b) was held over the weekend of May 14, 2016 at an Airbnb rental apartment located at § 87(2)(b) on the § 87(2)(b) floor. A number of women from around the country were attending the party when the following incident occurred. On the evening of May 14, 2016, § 87(2)(b) who was staying in a studio on the § 87(2)(b) floor of § 87(2)(b) called the police to report a burglary in his apartment.

§ 87(2)(b) testified that she and other women from the party returned to the apartment (BR08). § 87(2)(b) left by herself to get food. Upon returning, § 87(2)(b) was engaged by Det. Mazyck who asked her a variety of questions about the building and what she was there for. Det. Mazyck was with Lt. Lee. § 87(2)(b) said she was there for § 87(2)(b)'s bachelorette party. § 87(2)(b) tried to go back upstairs but was told by an officer, she did not remember which one, "No, you stay right here." This officer also instructed PO Calabro to remain with her.

Lt. Lee testified that he responded to § 87(2)(b) in response to a call about a burglary on the § 87(2)(b) floor (BR19). Lt. Lee spoke with the victim of the burglary, identified by the investigation as § 87(2)(b) outside of the building. § 87(2)(b) relayed that there was a male intruder inside his apartment who fled from the building after a small scuffle. § 87(2)(b) informed Lt. Lee that the entire day there were various strangers coming in and out from the apartment on the § 87(2)(b) floor. After he was done talking with § 87(2)(b) was seen exiting from the main entrance to § 87(2)(b). Lt. Lee did not suspect § 87(2)(b) of being involved in the burglary. Lt. Lee spoke with § 87(2)(b) to see if she had any information about the burglary. Lt. Lee informed § 87(2)(b) that he was canvassing for potential witnesses. § 87(2)(b) said she was attending a party for § 87(2)(b). Eventually § 87(2)(b) stopped talking to Lt. Lee and he

went inside the building to conduct further investigation. Lt. Lee denied that he instructed any officer to stay with § 87(2)(b) and to not let her leave.

PO Calabro was working as Lt. Lee's operator on the incident date (BR10). When they arrived, § 87(2)(b) was exiting § 87(2)(b). Lt. Lee asked § 87(2)(b) where she was going. § 87(2)(b) said she was coming from upstairs and was going to the store. Lt. Lee and Det. Mazyck were headed upstairs to further investigate the burglary. Lt. Lee said to § 87(2)(b) "Could you just wait? Don't go anywhere." Lt. Lee instructed PO Calabro, "Just stay with her. Don't let her go nowhere. We have to interview her." PO Calabro was also instructed by Lt. Lee to detain anyone else who attempted to leave the location until the burglary investigation was completed.

PO Zulema Porter testified that she arrived at the location and other officers were on their way inside the building and were going upstairs (BR27). § 87(2)(b) came up to PO Porter and told her that the officers were going upstairs to conduct an investigation into the burglary. Someone, PO Porter did not remember if it was her partner or a supervisor instructed her to stay with § 87(2)(b). PO Porter did not receive any instruction to not let § 87(2)(b) leave.

Det. Mazyck testified that he did not recall the interaction involving § 87(2)(b) outside of the building (BR12).

In People v. Debour, 40 N.Y 2d 210 (1976), the court established criteria that officers must meet in order to forcibly detain someone during a street encounter. In order to stop and forcibly detain an individual (aka a level three encounter) officers must possess individualized reasonable suspicion that the person has committed, is committing, or is about to commit a felony or misdemeanor (BR13).

§ 87(2)(b), § 87(2)(g)  
[REDACTED]

**Allegation B – Abuse of Authority: Inside § 87(2)(b) Detective Andre Mazyck threatened to arrest § 87(2)(b)**

**Allegation C – Abuse of Authority: Detective Andre Mazyck entered § 87(2)(b) 3rd Floor.**

**Allegation D – Abuse of Authority: Lieutenant James Lee entered § 87(2)(b) 3rd Floor.**

§ 87(2)(b), § 87(2)(g)

This incident occurred inside of § 87(2)(b) in Manhattan which is an apartment building. The undersigned visited the location and obtained photos of the inside of the building (BR14). The interior of the building consists of a single straight stairwell. At the top of the staircase is a door to the third floor apartment. In front of the door to the § 87(2)(b) floor apartment is a small landing.

§ 87(2)(b) testified that she and other people from the bachelorette party returned to the apartment sometime between 11:30 p.m. to 12:00 a.m. Before this, they had gone to few bars and restaurants and were drinking in a limo (BR15). § 87(2)(b) drank two cocktails and denied she was intoxicated. Some people from the party were getting ready to go out again when there was knocking on the door. § 87(2)(b) was on a couch and did not go to the door until she heard a male voice asking for her by name repeatedly. § 87(2)(b) went to the door and stood behind two other women who were in the doorway. § 87(2)(b) spoke with Lt. Lee who asked her repeatedly for her ID. § 87(2)(b) was confused about how Lt. Lee knew her name. Lt. Lee refused to tell § 87(2)(b) what was going on. In response, § 87(2)(b) repeatedly asked him to show his own identification because she was concerned about whether he was a real police officer. Finally, Lt. Lee said, “That’s it” and then he reached into the apartment through the women who were standing in front of § 87(2)(b) and grabbed her.

§ 87(2)(b) was identified as witnesses to this incident by § 87(2)(b) and a statement was obtained from her regarding this incident (BR16). § 87(2)(b)’s account of the exchange between § 87(2)(b) and Lt. Lee was generally consistent with § 87(2)(b)’s testimony. § 87(2)(b)’s account also corroborated § 87(2)(b)’s account that § 87(2)(b) was standing behind other women from the party inside the apartment when Lt. Lee grabbed her.

§ 87(2)(b) testified that Det. Mazyck and Lt. Lee arrived at their door (BR17). Det. Mazyck was primarily speaking with her and other women from the party who were at the door. Det. Mazyck was screaming and repeatedly asking to speak with § 87(2)(b) eventually decided to file the complaint regarding this incident in part because of how unprofessionally Det. Mazyck conducted himself during this incident. § 87(2)(b) was unsure whether Det. Mazyck and Lt. Lee were officers or whether someone from the bachelorette party had called for strippers. § 87(2)(b) kept asking Det. Mazyck who they were and why they were there but he refused to answer and continued demanding to see § 87(2)(b) and other women near the door spoke among themselves to try and determine whether anyone had called for strippers. § 87(2)(b) called 911 to ascertain whether police officers had been sent to the location. Det. Mazyck said, “You’re going to be arrested. Where is § 87(2)(b) [referring to § 87(2)(b)] eventually came to the door and spoke to Det. Mazyck from inside the apartment. § 87(2)(b) asked Det. Mazyck for ID but he refused to provide this. At some point, Det. Mazyck stuck his foot in the door. § 87(2)(b) continued asking for ID from Det. Mazyck while she was still on the

phone with 911. § 87(2)(b) got off the phone and saw that Det. Mazyck had entered the apartment and was arresting § 87(2)(b).

A recording of the 911 call placed by § 87(2)(b) was received from the NYPD (BR30-31). In the recording, § 87(2)(b) was unsure of the address of the location and spent some time speaking with other people present to try and determine the address. § 87(2)(b) reported to the operator that one of the officers had his foot in the door. Toward the end of the call, apparently after § 87(2)(b) was under arrest, voices are heard in the background but it cannot be heard what they were saying.

§ 87(2)(b) was also identified as a witness to this incident by § 87(2)(b) (BR18). § 87(2)(b) also corroborated that there was a back and forth between § 87(2)(b) and Lt. Lee in regards to him presenting his ID. At some point, Lt. Lee and Det. Mazyck entered in the apartment and were inside a hallway that leads to the front door.

Lt. Lee testified that he went to the third floor apartment with Det. Mazyck to canvass for witnesses and ascertain whether anyone had seen or heard anything regarding the burglary on the second floor (BR19). Lt. Lee was dressed in uniform and Det. Mazyck was dressed in business attire. Two or three women answered the door. Lt. Lee and Det. Mazyck identified themselves as police officers. Det. Mazyck was primarily speaking with the women at the start and proceeded to ask the women if they heard about anything that was going on and if § 87(2)(b) was there. The officers had obtained this name from § 87(2)(b) when they spoke with her outside of the building. The women refused to answer these questions. Lt. Lee asked if § 87(2)(b) was there and was told that there was no § 87(2)(b) in the apartment. Lt. Lee's suspicions were raised based on the information he had obtained from § 87(2)(b) that § 87(2)(b) was at the party and the refusal from the women to answer questions. Even though his suspicions were raised about this, the women were not under any obligation to cooperate with the investigation and were not doing anything illegal by refusing to answer their questions. Det. Mazyck did not tell any of the women that they would be arrested. § 87(2)(b) eventually came to the door. § 87(2)(b) stumbled to the door and smelled of alcohol which made Lt. Lee believe she was intoxicated. § 87(2)(b) repeatedly asked Lt. Lee for ID and Lt. Lee repeatedly identified himself to § 87(2)(b). As this back and forth was happening, § 87(2)(b) stepped closer to Lt. Lee and was right in his face, almost touching him. Lt. Lee asked § 87(2)(b) to step back. § 87(2)(b) did not comply and continued moving closer to him. § 87(2)(b) continued, "You tell me now; you could be a stripper." Lt. Lee kept telling § 87(2)(b) to step back and she did not comply. Lt. Lee took a step away from § 87(2)(b) toward the edge of the landing at the top of the stairs. § 87(2)(b) stepped closer to Lt. Lee. § 87(2)(b) was outside of the apartment and was either outside of the doorway or on the stairs. Lt. Lee denied that he ever went into the doorway of the apartment. Lt. Lee instructed § 87(2)(b) again to step back but she continued asking for ID. Lt. Lee then informed § 87(2)(b) that she was going to be placed under arrest and tried to grab her arm. When he made this determination, § 87(2)(b) was under arrest for disorderly conduct and obstructing governmental administration.

Det. Mazyck's testimony was generally consistent regarding the circumstances that led him and Lt. Lee to the § 87(2)(b) floor apartment (BR20). Det. Mazyck's testimony was also generally consistent in describing that the women in the apartment were uncooperative with the



investigation about the burglary. Det. Mazyck denied that he told anyone that they would be arrested. Det. Mazyck denied that he ever entered the apartment or that he had his foot in the doorway. § 87(2)(b) came to the door and started talking with Lt. Lee from inside the apartment. § 87(2)(b) was speaking aggressively with Lt. Lee but Det. Mazyck did not remember specifically what she was saying. Det. Mazyck did not know if § 87(2)(b) touched Lt. Lee. Lt. Lee instructed § 87(2)(b) to back up. Det. Mazyck did not remember what she did in response to this command except to say that she did not back up. § 87(2)(b) was speaking loudly and was gesturing with her hands. § 87(2)(b) did not come out of the apartment before she was placed under arrest. Lt. Lee eventually pulled § 87(2)(b) out of the apartment from where she was standing in the doorway.

In *PD v. Grossman* (OATH Index 2382/00R), it was found that misconduct occurred when an officer threatened to arrest a civilian without probable cause to do so (BR21).

In *Payton v. New York*, 445 US 573 (1980), the Fourteenth Amendment was interpreted as prohibiting the warrantless and nonconsensual entry into a suspect's home to conduct an arrest, absent exigent circumstances (BR22).

The exigent circumstance exception is outlined in *People v. McBride*, 2010 NY Slip Op 3473 (2010) and identifies six factors that guide whether exigent circumstances exist: 1) the gravity or violent nature of the offense with which the suspect is to be charged, 2) whether the suspect is reasonably believed to be armed, 3) a clear showing of probable cause to believe the suspect committed the crime, 4) strong reason to believe that the suspect is in the premises being entered, 5) a likelihood that the suspect will escape if not swiftly apprehended, and 6) the peaceful circumstances of the entry (BR23).

§ 87(2)(b), § 87(2)(g)  
[REDACTED]

§ 87(2)(b), § 87(2)(g)  
[REDACTED]

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation E – Abuse of Authority: Lieutenant James Lee arrested** § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) testified that Lt. Lee asked her for ID when she went to the door (BR15). § 87(2)(b) was concerned about what was happening because Lt. Lee and Det. Mazyck were not dressed in a blue NYPD uniform and she did not understand how they would have known her name. § 87(2)(b) repeatedly asked Lt. Lee to show his ID. The two went back and forth asking each other for ID. Eventually, Lt. Lee showed § 87(2)(b) a badge. § 87(2)(b) calmly asked Lt. Lee if he had any ID that had his name and photo on it because she was concerned the badge was fake. § 87(2)(b) brought up that she has a family member who is in the NYPD. While § 87(2)(b) was moving, she was waving her hands in front of her because she tends to speak with her hands. Lt. Lee then said, “That’s it,” grabbed her, and pulled her out of the apartment. The other women from the party were standing by quietly while she was speaking with Lt. Lee. § 87(2)(b)

§ 87(2)(b)'s arrest report reflects that she was cited for disorderly conduct, obstructing governmental administration, and resisting arrest (BR32). PO Harrington was the arresting officer and the narrative reflects that he was informed of these facts by Lt. Lee who was on the scene. According to the arrest report, Lt. Lee went to the § 87(2)(b) floor to investigate a burglary after obtaining information from the victim of the burglary. § 87(2)(b) became loud and got in Lt. Lee's face despite being told three times to back up. After the third command, § 87(2)(b) put her hands in his face and demanded his ID. § 87(2)(b) went to walk passed Lt. Lee, he grabbed her arm, and she fell down the stairs pulling him with her. § 87(2)(b) stated that she was thrown down the stairs and ran into the § 87(2)(b) floor apartment where she was handcuffed after struggling with officers.

§ 87(2)(b) was identified as a witness from NYPD documentation which listed him as the victim of the burglary which precipitated the call for police assistance. A statement was obtained from § 87(2)(b) (BR26). § 87(2)(b) was inside his apartment on the second floor and overheard a verbal exchange between the women upstairs and the officers who had gone to investigate. The women asked for ID and in response an officer stated, “I’m wearing uniform. This is my identification. I’d like to see your ID. I’d like to know who you are. Who am I speaking with?” The women refused to cooperate and the dialogue continued back and forth in this manner. One of the women said, “You have no right to do this. You need to leave now. Get out of here.” An officer responded, “If you push me again. If you put your hands on me again I’m going to have to put you in handcuffs.”

Lt. Lee testified that § 87(2)(b) was immediately uncooperative when she came to the door. Lt. Lee asked her if she lived at the location and to identify herself. § 87(2)(b) asked Lt. Lee for ID. Lt. Lee persisted in attempting to find out if she lived there and what was going on in the apartment. In response, § 87(2)(b) continued asking Lt. Lee for ID, moving closer to him, and causing him to back up at the same time. Lt. Lee told § 87(2)(b) to back up and she did not comply. Eventually, § 87(2)(b) had her fist or arm on Lt. Lee’s chest and her nose was touching his face. § 87(2)(b) did not push Lt. Lee, but because she appeared intoxicated and he was atop a steep staircase, Lt. Lee was concerned because he was not sure what she would do next. Meanwhile, the other women were yelling and talking. The women were repeating, “We don’t need to talk to you. We don’t know who you are.” Lt. Lee instructed § 87(2)(b) one last time to step back and she continued asking for ID. Lt. Lee made the determination to place § 87(2)(b) under arrest. § 87(2)(b)’s conduct constituted disorderly conduct because she was intoxicated, disobeyed direct lawful orders to step away from him, and made physical contact with him. Her conduct also constituted obstruction of governmental authority because she was interfering with his ability to continue to conduct an investigation into the burglary (BR19).

Lt. Lee and Det. Mazyck both testified that no further investigation was conducted involving the women from the § 87(2)(b) floor apartment after § 87(2)(b) was placed under arrest (BR19-20). Det. Mazyck testified that § 87(2)(b) was speaking loudly to Lt. Lee, was gesturing with her hands, though he could not describe specifically what she was doing, and she was in Lt. Lee’s face. § 87(2)(b) did not comply with Lt. Lee’s commands to back up.

NYS Penal Law 240.20(1) explains that “a person is guilty of disorderly conduct when, with intent to cause public inconvenience, and annoyance or alarm, or recklessly creating a risk thereof 1) He engages in fighting or in violent, tumultuous or threatening behavior...” (BR33).

People v. Square, 20 Misc. 3d 1126A (2008), discusses criteria that must be met in order to arrest someone for disorderly conduct and obstruction of governmental administration (BR24). Square explains that in order to be guilty of disorderly conduct, a person’s actions must “provoke, or risk provoking, a ‘breach of the peace’ or a ‘public disturbance.’ Disorderly conduct applies only to “situations that carry beyond the concern of individual disputants to the point where they have become a potential or immediate public problem.” Square goes on to argue “the mere expression that one feels aggrieved by the police – even when uttered in a loud voice – cannot constitute an offense.” In regards to OGA, Square explains that a person is guilty of this offense when they intentionally...prevent or attempt to prevent a public servant from performing an official

function, by means of...physical force or interference, or by means of any independently unlawful act.” Square goes on to state interfering with a police officer will not constitute OGA “unless it is established that the police were engaged in authorized conduct.” In Square, an arrest for the charge of resisting arrest was found to be facially insufficient when it was determined that the underlying charges of disorderly conduct and OGA were unjustified.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

**Allegation F – Force: Inside** § 87(2)(b) **Lieutenant James Lee used physical force against**

§ 87(2)(b)

[REDACTED] testified that Lt. Lee reached into the apartment and grabbed her by the dress strap on her shoulder (BR15). § 87(2)(b) fell forward off of her feet while Lt. Lee dragged her out of the apartment and down the first flight of stairs. § 87(2)(b)'s feet were dragging behind her. Outside of the second floor, Lt. Lee let go of § 87(2)(b) and she fell onto her bottom. § 87(2)(b) did not enter any other apartment when she was being taken out of the building. § 87(2)(b) kicked her feet against the wall to stand up. § 87(2)(b) was handcuffed. § 87(2)(b) was then dragged down the remaining stairs by Lt. Lee. As they were going down, the top of § 87(2)(b)'s head hit a wall and she could not remember what happened after this occurred. The next thing § 87(2)(b) remembered was that she was standing outside and § 87(2)(b) kept telling her to shut up because she had kept repeating “Why are you doing this to me? You’re hurting me.”

§ 87(2)(b) obtained medical treatment at § 87(2)(b) Hospital on § 87(2)(b) and again on § 87(2)(b). The records obtained from the hospital revealed the following (BR25). § 87(2)(b) reported she was grabbed and pulled down the stairs after being questioned by police officers and requesting to see ID. § 87(2)(b) stated she did not remember the whole incident but her friends told her that she did not pass out. § 87(2)(b) complained of pain in her lower

extremity, ankle, and back. The physical examination revealed the back of her head had mild tenderness to touch. § 87(2)(b) was diagnosed with “other injury of unspecified body region.” § 87(2)(b) obtained additional treatment on § 87(2)(b) when her symptoms did not subside. § 87(2)(b) reported dizziness and headache. In contrast to her CCRB statement, § 87(2)(b) reported to medical personnel that she was grabbed and pulled by her hair. § 87(2)(b) was diagnosed with post concussional syndrome.

§ 87(2)(b) testified that § 87(2)(b) was handcuffed inside the apartment but she could not see specifically what was happening because other women were obstructing her view (BR17). § 87(2)(b) was removed from the apartment with one officer in front of her and the other behind her holding her arm. § 87(2)(b) did not see what happened after § 87(2)(b) was taken out of the apartment because she went upstairs to get a view from the roof.

§ 87(2)(b) testified that Lt. Lee grabbed § 87(2)(b) and dragged her out of the apartment (BR18). § 87(2)(b) did not remember where § 87(2)(b) was touched. § 87(2)(b) fell but § 87(2)(b) did not remember how she fell. Lt. Lee dragged § 87(2)(b) down the stairs by her legs. § 87(2)(b)'s head was thumping against each stair on the way down. § 87(2)(b) only saw § 87(2)(b) being dragged down one flight of stairs before she could not see what was happening. § 87(2)(b) did not see § 87(2)(b) enter the second floor apartment.

§ 87(2)(b) testified that Lt. Lee grabbed § 87(2)(b) by the wrist and pulled her out of the apartment (BR16). § 87(2)(b) fell forward and fell onto the landing outside of the door. § 87(2)(b) was handcuffed after she fell. § 87(2)(b) was not sure if § 87(2)(b) stood up onto her feet but she was dragged down the stairs. A back and forth ensued on the way down as § 87(2)(b) tried to catch her balance. § 87(2)(b) did not see what happened after § 87(2)(b) got passed the first landing because she went back inside the apartment.

§ 87(2)(b) the victim of the reported burglary, in response to hearing the noise coming from upstairs, § 87(2)(b) went to look out his doorway at what was happening (BR26). § 87(2)(b) saw an officer reaching for § 87(2)(b)'s arm. § 87(2)(b) then spun her body and started sliding down the stairs on her bottom with her feet in front of her until she was outside of § 87(2)(b) apartment. Nobody was touching § 87(2)(b) as she slid down the stairs. § 87(2)(b) got up and ran into § 87(2)(b) apartment. Officers followed § 87(2)(b) into the apartment and tried to place her in handcuffs but she tried to break free of them, kicked, flailed her arms, and screamed in response. § 87(2)(b) fell to the floor and was handcuffed. § 87(2)(b) was picked up and she was carried out of the apartment. § 87(2)(b) appeared intoxicated because she was having trouble walking.

Lt. Lee testified that he grabbed § 87(2)(b)'s arm and told her that she was going to be placed under arrest (BR19). § 87(2)(b) immediately pulled away from him and twisted her body toward the stairs behind him. Lt. Lee held onto § 87(2)(b)'s wrist to keep her from falling but she continued pulling her body weight down the stairs. Lt. Lee lost his grip of § 87(2)(b) and she fell down the stairs to the second floor. § 87(2)(b) got up and ran into the second floor apartment, which was the scene of the burglary. Lt. Lee pursued § 87(2)(b) into the second floor apartment. When he caught up with her, § 87(2)(b) began fighting with him, PO Gavin, and other officers who were trying to assist in handcuffing her. § 87(2)(b) was waving her arms up and down,

pushing the officers, and kicking the officers. § 87(2)(b) was pushed to the floor and was handcuffed, picked up off of the floor, and taken out of the apartment. § 87(2)(b) was lifted off of the ground by four officers and was carried down the remaining stairs. § 87(2)(b) continued kicking her legs and moving her body. Lt. Lee never dragged § 87(2)(b) down the stairs.

Lt. Lee testified that he sustained pain to his wrist from trying to hold § 87(2)(b) up before she fell. LOD and AIDED paperwork was prepared in regards which reflected that Lt. Lee experienced pain in his right wrist while trying to restrain a resisting subject who was kicking and failing her arms in the stairwell (BR11).

Det. Mazyck testified that Lt. Lee grabbed § 87(2)(b) possibly by the arms but he did not recall, and pulled her down the stairs to the second floor (BR20). Other officers had arrived behind them on the staircase and also had a hold on § 87(2)(b) did not fall. § 87(2)(b) did not remember seeing § 87(2)(b) enter the second floor apartment.

PO Gavin testified that he was inside the § 87(2)(b) floor taking the complaint report for § 87(2)(b) (BR09). While he was doing this, he heard yelling coming from upstairs where Lt. Lee and Det. Mazyck had gone. Eventually, PO Gavin turned around and saw § 87(2)(b) backing into the § 87(2)(b) floor apartment throwing her fists at Lt. Lee who was trying to gain control of her. PO Gavin went over to assist in getting § 87(2)(b) handcuffed and she persisted in throwing her fists and kicking. Lt. Lee, PO Gavin, and § 87(2)(b) all fell to the floor. § 87(2)(b) continued flailing her legs and screaming. § 87(2)(b) was handcuffed and picked up. As she was being taken out of the apartment, § 87(2)(b) threw her legs up against the doorframe to avoid being removed. Once out of the apartment, § 87(2)(b) lifted her feet onto the stair handrail. Two other officers, PO Calabro and PO Labua, came from the bottom of the staircase to assist in removing § 87(2)(b). Lt. Lee, PO Gavin, PO Calabro, and PO Labua all had a hold of § 87(2)(b)'s legs and arms and carried her down the stairs.

PO Calabro testified that he was at the bottom of the staircase with § 87(2)(b) (BR10). PO Calabro saw § 87(2)(b) being carried down the stairs. Officers had § 87(2)(b) lifted off of the ground by her arms and legs. PO Calabro went up the stairs to assist and was kicked by § 87(2)(b) when he tried to grab her foot. PO Calabro believed § 87(2)(b) was intoxicated because of her angry demeanor and she was cursing. PO Calabro did not see § 87(2)(b) enter the § 87(2)(b) floor apartment.

PO Porter, PO Labua, and PO Harrington were all consistent in describing that § 87(2)(b) was picked up off of the floor and was carried down the stairs (BR27-29). All three officers denied that § 87(2)(b) was dragged down the stairs at any point. All three officers denied that they assisted in carrying § 87(2)(b) down the stairs.

Patrol Guide 203-11 states that “all members of the service at the scene of a police incident must use minimum necessary force. PG 203-11 goes on to state that “whenever it becomes necessary to take a violent or resisting subject into custody, responding officers should utilize appropriate tactics in a coordinated effort to overcome resistance” (BR12).

§ 87(2)(b), § 87(2)(g)

[REDACTED]

**Allegation G – Force: Outside** § 87(2)(b) **an officer used physical force against** § 87(2)(b)

§ 87(2)(b) testified that she went outside after § 87(2)(b) had been removed from the building (BR17). § 87(2)(b) spoke with Lt. Lee and asked him for his name. Lt. Lee showed § 87(2)(b) his jacket which had his name on it. § 87(2)(b) continued trying to speak with Lt. Lee to find out what was happening. While § 87(2)(b) was trying to get more answers from Lt. Lee, an officer got in between her and Lt. Lee and pushed her away. § 87(2)(b) then decided to go back inside the building. § 87(2)(b) described this officer as a white or Hispanic male, who stood about 6’0” tall, was 23-25 years old, and was dressed in uniform.

PO Harrington and PO Labua both testified that there were several people on the sidewalk in front of § 87(2)(b) at the point when they arrived on the scene. They responded to the scene in response to a request for assistance from Lt. Lee.

PO Labua testified that there were a number of women pushing by him to try and speak with § 87(2)(b) who had already been placed under arrest when he arrived (BR28). PO Labua told the women to stay to the side and to stay out of the way. PO Labua did not push anyone. PO Labua did not remember if anyone was talking with Lt. Lee outside. PO Labua did not push anyone who was trying to talk to Lt. Lee.

PO Harrington testified that he was speaking with § 87(2)(b) and was trying to calm her down because she was screaming and yelling (BR29). PO Harrington did not recall speaking with any other women from the party. PO Harrington did not recall anyone speaking with Lt. Lee outside of the building. PO Harrington did not push anyone.

Lt. Lee testified that women from the party were talking with him outside of the building and were trying to get § 87(2)(b) released (BR19). The women were all intoxicated. None of the women were close to him while they were talking with him. Other officers were around but Lt. Lee did not see any officer push any of the women.

PO Porter and PO Gavin both testified that other women were outside trying to calm down § 87(2)(b) (BR27, 09). Neither officer remembered if any of the women were talking with Lt. Lee. Neither officer saw anyone push anyone outside of the building.

§ 87(2)(b), § 87(2)(g)

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Squad: 8

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date